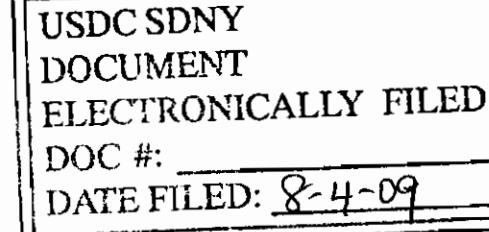


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MERRILL LYNCH & CO., INC.
SECURITIES, DERIVATIVE AND ERISA
LITIGATION

This Document Relates To:
Securities Action, 07-cv-9633 (JSR)(DFE)

Master File No. 07-cv-9633 (JSR)(DFE)



2 **[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION**

On the 27th day of July, 2009, a hearing having been held before this Court (the “Settlement Fairness Hearing”) to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated February 17, 2009 (the “Settlement Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against Defendants Merrill Lynch & Co., Inc. (“Merrill”); Merrill Lynch, Pierce, Fenner & Smith, Inc.; E. Stanley O’Neal; Gregory J. Fleming; Ahmass L. Fakahany; Jeffrey Edwards; Citigroup Global Markets; Morgan Stanley & Co.; UBS Securities; Wachovia Capital Markets LLC; Deloitte & Touche LLP; Merrill Lynch Capital Trust I; Merrill Lynch Capital Trust II; and Merrill Lynch Capital Trust III; (2) whether judgment should be entered dismissing the Securities Action on the merits and with prejudice, in favor of the Defendants and as against all persons or entities who are members of the Settlement Class herein who have not requested exclusion therefrom; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the net settlement proceeds among members of the Settlement Class; and (4) whether and in what amount to award attorneys’ fees and reimbursement of expenses to Co-Lead Counsel; and

All capitalized terms used but not otherwise defined herein shall have the same meanings as set forth and defined in the Settlement Stipulation; and

The Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; and

The Court having certified this Securities Action, which is part of this consolidation litigation, as a class action on behalf of all persons who purchased or acquired the common stock or Preferred Securities of Merrill during the Settlement Class Period of October 17, 2006 through and including December 31, 2008, as further defined in the Settlement Stipulation, with Lead Plaintiff certified as class representative, and Co-Lead Counsel appointed as Co-Lead Counsel for the Settlement Class; and

The Court having excluded from the Settlement Class those persons identified in the Order and Final Judgment and in Exhibit A thereto; and

It appearing that a notice of the Settlement Fairness Hearing substantially in the form approved by the Court in the Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Order"), including the full text of the Plan of Allocation, was mailed to all persons and entities reasonably identifiable who, during the Settlement Class Period, purchased or acquired the common stock or Preferred Securities of Merrill that are the subject of the Securities Action, except those persons and entities which validly excluded themselves from the definition of the Settlement Class; and

It appearing that a Summary Notice of the Settlement Fairness Hearing substantially in the form approved by the District Court in the Preliminary Order was published in accordance with the Preliminary Order and the specifications of the Court; and

The Court having found, in the Order and Final Judgment, that: (a) the notice provided to the Settlement Class provided the best notice practicable under the circumstances; (b) the notice provided due and adequate notice of these proceedings and the matters set forth herein, including without limitation the Settlement and Plan of Allocation, to all persons entitled to such notice to the fullest extent practicable; and (c) the notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act, and the requirements of due process; and (d) a full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement, the Plan of Allocation and matters related thereto, and to participate in the hearing thereon; and

It appearing that no person has objected to the Plan of Allocation.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:

1. The Court has jurisdiction over the subject matter of the Securities Action, Lead Plaintiff, all Settlement Class Members and the Defendants.
2. The Court hereby approves the Plan of Allocation and finds that:
 - (a) the Plan of Allocation is, in all respects, fair, reasonable and adequate and in the best interest of the Settlement Class;
 - (b) the Plan of Allocation was the product of informed decisions by Lead Plaintiff and Co-Lead Counsel; and
 - (c) Lead Plaintiff and Co-Lead Counsel have adequately evaluated and considered the legal and factual issues in arriving at the Plan of Allocation, including in consultation with Lead Plaintiff's damage expert, among other things.

3. Accordingly, the Court having authorized and directed implementation of all the terms and provisions of the Settlement Stipulation and the Order and Final Judgment, and having found that the Plan of Allocation is fair, reasonable and adequate as to the Members of the Settlement Class, Lead Plaintiff, Co-Lead Counsel, the Claims Administrator and the Defendants are directed to consummate the Settlement, including without limitation, the processing of claims submitted in accordance with the terms and provisions of the Settlement Stipulation and the Plan of Allocation.

4. This Order Approving the Plan of Allocation is subject to all provisions of the Order and Final Judgment, and nothing in this Order Approving the Plan of Allocation shall affect or negate any provisions of the Order and Final Judgment.

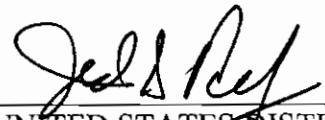
5. There is no just reason for delay in the entry of this Order Approving Plan of Allocation, and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

6. Without affecting the finality of the Order and Final Judgment in any way, the Court hereby retains continuing jurisdiction over the parties and the Settlement Class Members for all matters relating to the Securities Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulation, the Plan of Allocation, the processing of any Proof of Claim and Release form, this Order Approving the Plan of Allocation, the Order and Final Judgment, and any application for fees and expenses in this litigation including without

limitation any such fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Settlement Class Members.

Dated: New York, New York

7/31, 2009



UNITED STATES DISTRICT JUDGE
JED S. RAKOFF

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